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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

October 13, 2015

The Honorable Loretta E. Lynch  
Attorney General  
U.S. Department of Justice

Dear Attorney General Lynch:

I write today to request information about the Department of Justice's interactions with state and local law enforcement agencies across the United States. I am very concerned that the Administration's policies, as currently implemented by the Department, may be reducing the effectiveness of state and local law enforcement officials, chilling their ability to stop criminals in their communities, and fueling a nationwide crime increase.

It is my understanding that the Department has, in recent years, launched investigations of various state and local law enforcement agencies, including major city police departments,<sup>1</sup> and intervened in the activities and policies of state and local law enforcement agencies, sometimes at the request of political officials.<sup>2</sup>

It is important that we know more about the Department's investigations of, and interactions with, these state and local law enforcement agencies, particularly if the Department has placed any legal, policy, financial, or other constraints on these agencies. It is also important that we know how, if at all, these federally imposed constraints are impacting the ability of these agencies to protect the public.

Additionally, we would like additional information about what appears to be documented misconduct on the part of Department employees who were involved in a prior civil rights investigation of the New Orleans Police Department (NOPD). The Fifth Circuit recently affirmed a U.S. district judge's vacatur of the convictions of several NOPD officers after the district judge learned that several Department employees were engaged in gross misconduct that

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<sup>1</sup> See, e.g., Department of Justice, Press Release, *Justice Department Opens Pattern or Practice Investigation into the Baltimore Police Department* (May 8, 2015); see also Department of Justice, Press Release, *Justice Department Announces Findings of Two Civil Rights Investigations in Ferguson, Missouri* (Mar. 4, 2015).

<sup>2</sup> See, e.g., Associated Press, *Baltimore mayor seeks federal civil-rights probe of police*, WTOP (May 6, 2015) (noting Baltimore Mayor Stephanie Rawlings-Blake's decision to "accept outside [federal] intervention" after initially asserting a desire to avoid federal intervention).

compromised the underlying case. The Department employees who were involved in this misconduct included former U.S. Attorney for the Eastern District of Louisiana Jim Letten, former First Assistant U.S. Attorney Jan Mann, and Karla Dobinski, who (to our knowledge) still holds her position in the Department's Civil Rights Division.<sup>3</sup>

At a time when the President's anti-police rhetoric is emboldening criminals and fueling a nationwide surge in violent crime,<sup>4</sup> the American public deserves to know if the Department is using the machinery of the United States government to suppress state and local law enforcement's effectiveness. The American public also deserves to know more about the misconduct of Department employees, particularly if these employees continue to be party to current Department policy or investigative work.

I would therefore request that the Department engage in the following preservation efforts, effective immediately:<sup>5</sup>

1. Preserve all paper-based documents, e-mail-based communications, e-mail-based calendar appointments, electronic documents, electronic communications (including voicemails, SMS (i.e., text) messages, and instant messages), and all other electronic data regardless of format, created since January 1, 2011, that:
  - a. Are records originally produced or currently in the possession of the Department's Civil Rights Division;

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<sup>3</sup> See generally Andrew C. McCarthy, *The Justice Department's 'Grotesque' Misconduct against New Orleans Cops*, NATIONAL REVIEW (Aug. 22, 2015) (discussing the history of the case and the Fifth Circuit affirmation of the district court decision); see also Naomi Martin, *DOJ prosecutor Karla Dobinski faces internal probe after NOLA.com comments revealed*, TIMES-PICAYUNE (Sep. 23, 2013) (discussing how Dobinski and former Department prosecutors Sal Perricone and Jan Mann used the newspaper's online comments section to comment on the pending case, and how Dobinski was engaged in such conduct despite being tasked with protecting the reputation of one of the police officers on trial).

<sup>4</sup> Preliminary data support the conclusion that violent crime is on the rise, and that this trend includes a significant increase in homicides. See, e.g., Monica Davey and Mitch Smith, *Murder Rates Rising Sharply in Many U.S. Cities*, N.Y. TIMES (Aug. 31, 2015) (citing the fact that "[m]ore than 30 other cities have also reported increases in violence from a year ago," and that cities like New Orleans, Baltimore, Washington, and St. Louis have seen dramatic increases in homicide rates); Edmund DeMarche, *Bloody Baltimore: No end seen to post-Freddie Gray spike in homicides, shootings*, FOXNEWS.COM (Oct. 5, 2015) (noting that homicides in Baltimore were up 39% for the month of September as compared to September 2014, that the city's homicide rate is 52% higher than it was last year at this time, that there has been an 80% increase in non-fatal shootings as compared to last year at this time, and that the 246 homicides recorded between January 1-September 26, 2015, "put Baltimore dangerously close to the record pace of 1993, when 353 people were victims of homicide"). The concern about the rise in crime is shared by federal law enforcement officials, including Director Comey at the Federal Bureau of Investigation. See Devlin Barrett, *FBI Chief 'Very Concerned' About Apparent Rise in Crime*, WALL STREET JOURNAL (Oct. 1, 2015) (citing recently released FBI data demonstrating a spike in crime levels nationwide in 2015 after a decrease between 2013 and 2014, and quoting Director Comey's discussion of the "nationwide phenomenon [of violent crime] that's centered in the cities"); Peter Hermann, *Federal agents teaming with D.C. police to combat city's crime surge*, WASH. POST (Oct. 7, 2015) (discussing the embedding of FBI agents with D.C. city detectives as part of an effort to "combat a violent crime surge in the District").

<sup>5</sup> I would remind you, the Department, and its officials, personnel, contractors, grantees, and consultants that violation of this preservation order is a violation of federal criminal law. See generally 18 U.S.C. § 1505.

- b. Relate to investigations of state, local, or municipal law enforcement agencies (which include police departments, sheriff offices, or other law enforcement entities);
- c. Relate to the development or implementation of guidelines, procedures, or protocols used in the investigation of any of the agencies described in 1.b.;
- d. Are or relate to any consent decrees or other agreements referencing or impacting the agencies described in 1.b.;
- e. Relate to any investigations of any type of misconduct of any Department employees, contractors, subcontractors, grantees, subgrantees, and consultants who may have played any direct or indirect role in any investigation of any of the agencies described in 1.b.; and
- f. Include or reference either the names of Michael Brown, Eric Garner, or Freddie Gray, or the incidents that led to their deaths.

For the purposes of this request, “preserve” means taking any and all reasonable steps to prevent the partial or full destruction, alteration, overwriting, formatting, deletion, shredding, incineration, wiping, relocation, migration, theft, revision, or mutation of electronic and non-electronic documents, records, and logs, as well as negligent or intentional handling that would make such records incomplete or inaccessible.

- 2. Exercise any and all reasonable efforts to identify and notify former Department employees, contractors, subcontractors, grantees, subgrantees, and consultants who may have access to such electronic or non-electronic records that these records are also to be preserved.
- 3. If it is a practice of the Department, any Department component, any federal employee, any contract employee, any grantee or subgrantee, or any consultant to destroy or otherwise alter such electronic or non-electronic records, either halt such practices immediately, or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested.

Please also provide the following unredacted documents and information for the time period from January 1, 2011, to the present (unless a different time period is specified below):<sup>6</sup>

- 1. The number of Department-initiated investigations against state, local, or municipal law enforcement agencies (which include police departments, sheriff offices, or other law enforcement entities), and the names of those agencies.

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<sup>6</sup> It is important to note that this is a request for the production of documents and information *to* the Committee, and is not a request for *in camera* review of documents and information in the Department’s possession. The requested documents are to be *physically* transferred in *unredacted* form to the Committee. Similarly, this is also not a request for the provision of any previously released versions of similar or redacted information that may have been made available via Freedom of Information Act requests, since congressional document requests are not restricted by either the Freedom of Information Act or the Privacy Act.

2. Regarding the investigations identified in 1:

- a. The number of investigations that are currently ongoing;
- b. The number of investigations that are currently closed;
- c. For any of the investigations that are currently closed, the number and identities of such agencies that have had to make internal policy changes in order to facilitate closure of the Department's investigation or satisfy the Department's concerns, including changes to:
  - i. Use of force guidelines, procedures, or protocols;
  - ii. Arrest or detention guidelines, procedures, or protocols;
  - iii. Internal affairs or disciplinary guidelines, procedures, or protocols; and
  - iv. Any other guidelines, procedures, or protocols;
- d. Copies of any such consent decrees or other agreements that include discussion of changes to any guidelines, procedures, or protocols of such agencies;
- e. For any of the investigations that are currently closed, the number and identities of such agencies that have had to make payments to third-party individuals or organizations in order to facilitate closure of the Department's investigation or satisfy the Department's concerns, including:
  - i. The names or identities of the third parties who received payment or payments from such agencies;
  - ii. Whether such payment or payments were made directly to such third parties, or were made to the Department for subsequent transfer to such third parties; and
  - iii. The dates and amounts of such payment or payments; and
- f. Copies of any settlement agreements or orders that include the names or identities of third-party payment arrangements by such agencies;

3. Regarding the investigations identified in 1:

- a. The number of investigations that were the direct result of a request by one or more federal, state, local, or municipal officials that the Department conduct an investigation;

- b. The names or identities of such officials who have requested that the Department conduct such investigations; and
  - c. Copies of any correspondence (including paper and e-mail correspondence) between such officials and Department employees, including e-mail correspondence with other Administration officials where Department employees are cc:ed or bcc:ed.
4. The Department's account or accounts that provide the funding for the investigations identified in 1.
5. The names of the Department component or components, in addition to the Civil Rights Division, that are responsible for leading or supervising, or otherwise play a role in, the investigations identified in 1.
6. The names of all Department employees who assisted Civil Rights Division personnel with these investigations but were or are assigned to a division other than the Civil Rights Division.
7. Regarding the Department's investigation of the New Orleans Police Department:
  - a. An explanation as to why former U.S. Attorney for the Eastern District of Louisiana **Jim Letten** or former First Assistant U.S. Attorney **Jan Mann** were not terminated from their federal employment for their investigation-related misconduct;
  - b. An indication as to whether Letten or Mann are receiving any post-employment federal benefits;
  - c. Details regarding the current title, role, and status of **Karla Dobinski** within the Department (assuming she still works for the Department);
  - d. If Dobinski is still employed by the Department, an explanation as to why she is still employed by the Department, given her court-documented misconduct; and
  - e. Whether the Department has reimbursed the NOPD for its litigation costs, given the federal court vacatur of the convictions and the documented misconduct of Department officials.

I would also request that you provide us with any additional materials that fall into the above categories on a continuing basis but are created, written, or otherwise produced after the Department's initial receipt of this request.

Please provide the requested documents and information as soon as possible, but **no later than 9:00 a.m. on Tuesday, October 20, 2015**. When producing documents to the Committee, please deliver separate production sets to both the Majority Staff in Room 224 of the Dirksen Senate Office Building and the Minority Staff in Room 152 of the Dirksen Senate Office Building.

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I appreciate your cooperation in this very important matter and look forward to receipt of the requested material at the stated date and time. Please contact Committee staff at (202) 224-5225 if you have any additional questions about how to comply with the terms of this production request.

Sincerely,



Ted Cruz  
Chairman  
Subcommittee on Oversight, Agency Action,  
Federal Rights and Federal Courts

Cc: The Honorable Charles E. Grassley  
Chairman  
Senate Committee on the Judiciary

The Honorable Patrick J. Leahy  
Ranking Member  
Senate Committee on the Judiciary

The Honorable Christopher A. Coons  
Ranking Member  
Subcommittee on Oversight, Agency Action,  
Federal Rights and Federal Courts

The Honorable James Comey  
Director  
Federal Bureau of Investigation  
U.S. Department of Justice

The Honorable Michael E. Horowitz  
Inspector General  
Office of the Inspector General  
U.S. Department of Justice